

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 10/13/2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
-against-	:	03-CR-631 (VEC)
	:	21-CV-8414 (VEC)
JOSE CASAS,	:	
	:	ORDER
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS on September 29, 2021, Mr. Casas filed a motion for clarification of judgment and/or a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255, *see* Petition, 03-CR-631, Dkt. 42;¹

WHEREAS the Court construes Mr. Casas's motion as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255;

WHEREAS on October 12, 2021, the Clerk of Court opened a civil case with docket number 21-CV-8414 and Mr. Casas's habeas petition was docketed as docket entry 1;

WHEREAS Mr. Casas's petition is his third petition for a writ of habeas corpus, *see* 03-CR-631 Dkts. 21, 35, 40; *see also* 10-CV-4341, 16-CV-5114;

WHEREAS pursuant to 28 U.S.C. § 2255(h), a petitioner may only file a successive motion for habeas corpus relief upon certification by the U.S. Court of Appeals for the Second Circuit; and

WHEREAS it does not appear that Mr. Casas has moved for certification from the Second Circuit before filing his petition;

¹ Mr. Casas's petition has been docketed twice. *See* Petitions, 03-CR-631, Dkts. 41, 42. The petition at docket entry 41 appears to be missing a page. The Court will refer only to the petition at docket entry 42, which contains the complete petition.

IT IS HEREBY ORDERED that Mr. Casas's petition for a writ of habeas corpus is STAYED. The Court treats Mr. Casas's application as a motion for certification under 28 U.S.C. § 2255(h). Because any motion for certification under 28 U.S.C. § 2255(h) must be presented to and decided by the Court of Appeals, the Clerk of Court is respectfully directed to refer this motion to the Clerk of Court of the U.S. Court of Appeals for the Second Circuit.

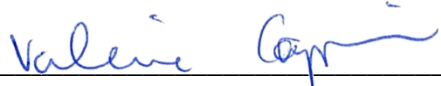
The Clerk is further directed to close the open motions at docket entries 41 and 42 in 03-CR-631. The Clerk is further directed to close the case 21-CV-8414. If the Court of Appeals authorizes Mr. Casas to proceed in this matter, he shall move to reopen the civil case under docket number 21-CV-8414.

As the motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk is further directed to mail a copy of this Order to Jose Casas, Reg. No. 55866-019, CI Big Spring (Flightline), Correctional Institution, 2001 Rickabaugh Drive, Big Spring, TX 79720.

SO ORDERED.

Date: October 13, 2021
New York, NY



VALERIE CAPRONI
United States District Judge